In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 359

JAMES EASTMAN, PETITIONER

v.

JOHN W. GARDNER, SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM IN OPPOSITION FOR RESPONDENT

The only question in this case is whether the administrative determination that petitioner was not entitled to Social Security Act benefits, because he was not a bona-fide employee within the meaning of the Act, is supported by substantial evidence.[1]

[1] The Act expressly provides that respondent Secretary's "findings * * * as to any fact, if supported by substantial evidence, shall be conclusive." Section 205(g), 42 U.S.C. 405(g).

The court of appeals, after an extensive review of the underlying facts and after reference to the "100 pages of transcribed testimony and 64 documentary exhibits" (Pet. App. A, 6), held "that there is substantial evidence" to support the administrative denial of benefits and "that this case presents a collusive family arrangement to permit claimant to obtain Social Security benefits from his own rental income rather than from a genuine payment of wages" (Pet. App. A, 8).

Petitioner's claim for Social Security benefits is based on his allegation that he was employed as a photo finisher by his stepson Donald Eastman during the years from 1956 through the first half of 1959 and as a parking lot attendant by his stepson George Giancarli during the remainder of 1959 and the first quarter of 1960. In addition to the fact that the payments to the father, which equaled the maximum amount creditable under the Social Security Act, were substantially more than the prevailing wages for such services, an examination of the tax returns filed by the stepsons showed that their businesses could not economically justify the employment of the father. Most important, however, the record shows that the amounts allegedly paid to the father as wages were offset by the diversion to the stepsons of rental income due to the father (Pet. App. A, pp. 2-6).

These facts clearly support the conclusion that petitioner "did not in fact work as an employee of his stepsons, and that he was not a fully insured individual under the Act" (Pet. App. A. 7). In any

event, the question presented is essentially factual in nature and does not warrant further review here.[2]

It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

AUGUST 1967

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[2] Petitioner's other contention, *i.e.*, that a new factual issue was "injected" at the court of appeals level, is refuted by the record. That issue—whether payments to petitioner by his stepsons were really wages or a mere facade for turning over to petitioner his own rental income—has been in the case from its outset (Administrative Tr. 5-6, 137-139).

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